

Curling, Donna v. Raffensperger, Brad

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DONNA CURLING, et al.,  
Plaintiffs,

CIVIL ACTION FILE

vs.

NO. 1:17-cv-2989-AT

BRAD RAFFENSPERGER, et al.,  
Defendants.

30(b)(6) VIDEO DEPOSITION of the COALITION FOR GOOD  
GOVERNANCE, INC. through MARILYN MARKS  
March 17, 2022

11:01 a.m.

TAKEN BY REMOTE VIDEOCONFERENCE  
Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138

Curling, Donna v. Raffensperger, Brad

Page 2

1	INDEX TO EXHIBITS		
2	EXHIBIT	DESCRIPTION	PAGE
3	Exhibit 1	Notice of Deposition	26
4	Exhibit 2	Objections to Notice of	28
5		Deposition	
6	Exhibit 3	Plaintiffs' Third Amended	49
7		Complaint	
8	Exhibit 4	First Supplemental Complaint	56
9		of Plaintiffs Coalition for	
10		Good Governance, Laura Digges,	
11		William Digges III, Ricardo	
12		Davis, and Megan Missett	
13	Exhibit 5	Supplemental Declaration of	59
14		Marilyn Marks	
15	Exhibit 6	2017 Form 990-EZ	95
16	Exhibit 7	2018 Form 990	100
17	Exhibit 8	2019 Form 990	106
18	Exhibit 9	Plaintiffs' Notice of Filing	109
19		Declaration	
20	Exhibit 10	Coalition Plaintiffs' Detailed	111
21		Specification In Support of	
22		Motion for Attorneys' Fees	
23	Exhibit 11	New York correspondence from	120
24		January 2021 citing Curling	
25	Exhibit 12	NCSBOE letter from 2019	122

## Curling, Donna v. Raffensperger, Brad

Page 3

1	Exhibit 13	E-mails, 9/26/19,	123
2		CGG2021001277506	
3	Exhibit 14	3/4/21 letter from CGG to	126
4		Georgia Republican Leaders	
5	Exhibit 15	Mission Statement - Coalition	136
6		for Good Governance	
7	Exhibit 16	Articles of Incorporation for	138
8		a Nonprofit Corporation	
9	Exhibit 17	Who We Are - Coalition for	140
10		Good Governance	
11	Exhibit 18	CGG Board Discussion Package	150
12	Exhibit 19	Fundraising message	161
13	Exhibit 20	Fundraising message during	162
14		2020	
15	Exhibit 21	Donate - Coalition for Good	163
16		Governance	
17	Exhibit 22	Home page - Coalition for Good	166
18		Governance	
19	Exhibit 23	Current Projects - Coalition	167
20		for Good Governance	
21	Exhibit 24	Tweets from January 24, 2021	168
22	Exhibit 25	8/22/20 tweet	171
23	Exhibit 26	E-mails, 1/18/18,	186
24		CGG2021001278172	
25	Exhibit 27	Supplemental Response to	188

## Curling, Donna v. Raffensperger, Brad

Page 4

1		Interrogatory No. 12	
2	Exhibit 28	Coalition Plaintiffs'	190
3		Responses to Defendant Anh	
4		Le's First Interrogatories	
5	Exhibit 29	Joint Litigation and Common	213
6		Interest Agreement	
7	Exhibit 30	Facebook advertisement from	216
8		Friends of Coalition for Good	
9		Governance	
10	Exhibit 31	E-mail regarding ballot image	222
11		legislation	
12	Exhibit 32	E-mails, 8/24/21, Subject:	225
13		Garland's new lawsuit against	
14		BMDs	
15	Exhibit 33	January 1, 2021 tweet	238
16	Exhibit 34	Coalition for Good	248
17		Governance's and Coalition	
18		Plaintiffs' Objections and	
19		Responses to Defendant Brad	
20		Raffensperger's First Request	
21		for Admission	
22	Exhibit 35	GA Senate Judiciary	259
23		Sub-Committee on Election Law	
24		12.30.2020	
25	Exhibit 36	Plaintiff Coalition for Good	266

Curling, Donna v. Raffensperger, Brad

Page 5

1	Governance's Objections and	
2	Responses to State Defendants'	
3	Second Request for Production	
4	of Documents	
5	Exhibit 37	Response of Coalition for Good 267
6		Governance to Brad
7		Raffensperger's First Request
8		for Production of Documents
9	Exhibit 38	Handwritten notes 275

10

11

12 INDEX TO EXAMINATION

PAGE

13 By Mr. Tyson 10

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES OF COUNSEL: (All appearances via Zoom)  
2 On behalf of the Coalition for Good Governance and  
3 the Deponent:

4 ROBERT ALEXANDER MCGUIRE, ESQUIRE  
5 Robert McGuire Law Firm  
6 113 Cherry Street  
7 Seattle, Washington 98104  
8 ram@lawram.com  
9

10 On behalf of the Curling Plaintiffs:

11 ZACHARY FUCHS, ESQUIRE  
12 JENNA B. CONAWAY, ESQUIRE  
13 REILEY JO PORTER, ESQUIRE  
14 SONJA SWANBECK, ESQUIRE  
15 HANNAH ELSON, ESQUIRE  
16 Morrison & Foerster, LLP  
17 2000 Pennsylvania Avenue, NW  
18 Washington, DC 20006  
19 zfuchs@mofo.com  
20 jconaway@mofo.com  
21 rporter1@mofo.com  
22 sswanbeck@mofo.com  
23 helson@mofo.com  
24  
25

Curling, Donna v. Raffensperger, Brad

Page 7

1 APPEARANCES (Continued):

2 On behalf of Defendant Secretary of State Brad

3 Raffensperger:

4 BRYAN TYSON, ESQUIRE

5 BRYAN F. JACOUTOT, ESQUIRE

6 DIANE FESTIN LAROSS, ESQUIRE

7 Taylor English Duma LLP

8 1600 Parkwood Circle, Suite 200

9 Atlanta, Georgia 30339

10 btyson@taylorenghish.com

11 bjacoutot@taylorenghish.com

12 dlaross@taylorenghish.com

13 -and-

14 CAREY MILLER, ESQUIRE

15 VINCENT R. RUSSO, ESQUIRE

16 Robbins Ross Alloy Belinfante Littlefield

17 500 14th Street, N.W.

18 Atlanta, Georgia 30318

19 cmiller@robbinsfirm.com

20 vrusso@robbinsfirm.com

21

22

23

24

25

1 APPEARANCES (Continued):

2 On behalf of Defendant Fulton County:

3 DAVID LOWMAN, ESQUIRE

4 Fulton County Attorney's Office

5 141 Pryor Street, Suite 4038

6 Atlanta, Georgia 30303

7 david.lowman@fultoncountyga.gov

8

9 Also Present:

10 Krishan Patel, videographer

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1 since the last time that documents were filed, but  
2 yes, the basic -- the basic objections that we have  
3 are covered in the docket.

4 Q And just so I understand, you referenced  
5 actions of counties. Is CGG diverting resources for  
6 things that -- for nonparties in this case as well?

7 A When you say "for nonparties" --

8 Q Let me ask it this way --

9 A Okay.

10 Q -- if that's -- is CGG also diverting  
11 resources based on the actions of nonparties to the  
12 Curling case?

13 A I'm not sure that we would know how to  
14 parse out -- when we see election administration  
15 problems in a county, I'm not sure we would know how  
16 to parse out how much of that is attributable to a  
17 County's misunderstanding, misapplication versus the  
18 law and the direction of the State Defendants. I  
19 don't think we have any such precision.

20 Q So if CGG prevailed on all of its claims  
21 in the Curling case, but counties continued to have  
22 election administration problems, CGG would continue  
23 diverting resources to address those county  
24 problems, right?

25 A I don't know that I would call that

1 necessarily diverting resources because if we're  
2 talking about, hey, if BMDs went away tomorrow and  
3 the Dominion Voting System were remedied in the ways  
4 that we have requested for our relief, if all of  
5 that happened tomorrow morning, I expect that we  
6 would still -- I know we would still be working on  
7 county election administration problems and issues.

8 I wouldn't necessarily call -- I wouldn't  
9 call that a diversion -- at all call that a  
10 diversion of resources. That's much more of the  
11 core of the kind of work we want to do and have not  
12 been able to do.

13 Do I expect that should we be successful  
14 in obtaining relief on everything we ask for all  
15 election administration problems go away, no, I  
16 don't expect that. And that's really much more, as  
17 I say, of the kind of work we want to do is the more  
18 day-to-day local-level transparency and voter  
19 protection type of work.

20 Q Thank you.

21 I've marked as Exhibit 3, I'll go ahead  
22 and share this on the screen, the third amended  
23 complaint, which is document number 226 in the  
24 Curling case.

25 (Exhibit Number 3 was marked for

1 rules to remind me what -- put this in context for  
2 me, if you don't mind? It's been a long time since  
3 I looked at this complaint.

4 Q Certainly. Let me see if I can get those  
5 up here for you. And maybe I can ask a more general  
6 question while I'm pulling these up for you.

7 A Okay.

8 Q What specifically does the Coalition  
9 allege that it is having to spend financial and  
10 non-financial resources on as a result of the  
11 alleged actions or the actions of the State  
12 Defendants in this case?

13 A Well, certainly litigation cost is an  
14 enormous drain on our resources and all that goes to  
15 support the attorneys.

16 Are you wanting me to, like, tell you  
17 things like we have to buy transcripts; are you  
18 asking me to list kind of litigation support cost --  
19 I mean expenses?

20 Q I'm not looking specifically for numbers.  
21 What I'm looking for is kind of by category. So the  
22 allegation is that you had to divert resources from  
23 something to something else.

24 A Right.

25 Q And my question is: What is the Coalition

1 diverting resources to as a result of the actions  
2 that are alleged in your complaints?

3 A And you're asking right now about  
4 financial resources, correct?

5 Q Let's start with financial, and then we'll  
6 do volunteer or other non-financial resources next.  
7 So the record's clear let me ask the question again  
8 specifically about finances.

9 A Okay.

10 Q What financial resources is the Coalition  
11 diverting from existing projects -- I'm sorry. I  
12 turned myself around. Let me start again.

13 So the Coalition is alleging that it  
14 diverted resources from certain things to other  
15 things, financial resources, correct?

16 A Yes.

17 Q And what specifically is the Coalition  
18 diverting its financial resources to as a result of  
19 the allegations in the complaint?

20 A Okay. And, Mr. Tyson, I'm going to answer  
21 as it relates to the complaint as opposed to  
22 answering based on those two citations because I  
23 don't remember what those citations are right now.  
24 Okay?

25 Q That's fine.

1           A       Okay. So as you know litigation is  
2 expensive, and there are way too many types of  
3 expenditures we have to make to support litigation  
4 that we would prefer not to be involved in.

5                   One, the example I gave you for a moment  
6 ago, we certainly have to buy transcripts, we have  
7 to buy services that collect documents, and, for  
8 example, our Logikcull subscription is expensive.  
9 We have to pay the attorneys what we can, and it  
10 basically absorbs almost all of the financial  
11 resources that we would otherwise be spending on  
12 non-litigation programs.

13                   And let's see. We have had to pay experts  
14 and travel for experts, travel for our attorneys  
15 back in the days before COVID when we did things in  
16 person, and so it is the entire variety of things  
17 that go to support litigation.

18                   Our interns, we do pay our interns  
19 modestly, but it's still big money to us, and they  
20 spend the majority of their time on litigation  
21 support, whether it's doing analytical work or doing  
22 some research for us.

23                   So I'm sure that is not all that we -- of  
24 the types of expenditures that we have that go for  
25 litigation support, but that's -- that will be

1 generally the types of expenditures we have.

2 Q Let me ask you about some of the specifics  
3 in the third amended complaint, Exhibit 3.

4 A All right.

5 Q You see the second part, it says:  
6 Specifically, Coalition has been and will be  
7 required by Defendants' past and intended conduct to  
8 do the following.

9 And on the next page the first bullet  
10 point relates to the topics you just discussed:  
11 Paying the fees of lawyers, litigation, travel,  
12 copying, all those types of expenses.

13 Do you see that?

14 A I do, and it makes me think of some other  
15 stuff that I forgot about expenses.

16 Q Okay. My question specifically, though,  
17 is if this lawsuit was over, then you would no  
18 longer have to pay for the things that are listed in  
19 the first bullet on page 55, correct?

20 A That's correct.

21 Q And the second bullet point is a  
22 non-financial allegation here, and it's 90 percent  
23 your time, and I suspect it may be more -- feel like  
24 more than 90 percent of your time.

25 A It does. I think we missed a zero there.

1 think that voting a vote-by-mail ballot is best.

2 At other times we have talked to people  
3 about -- who have not been able to get their ballot  
4 on time or for some reason just been unable to vote  
5 by mail, we have shared with them how to go into the  
6 polling places at a time in early voting that is not  
7 necessarily crowded and then find a private machine  
8 to vote on, how it's perfectly fine to ask the poll  
9 manager if they can wait until a machine that's more  
10 private is available. It's that kind of effort that  
11 we have taken to tell people it's perfectly fine to  
12 demand a private voting area.

13 Q Do you educate Coalition members  
14 differently than the voting public, or is the  
15 educational message the same?

16 A The educational message would generally be  
17 the same, it's just that we would have more contact  
18 with people who are more active members.

19 Q And in this particular document there's  
20 not a whole lot of detail about other projects that  
21 you are unable to be engaged in. Do you recall  
22 submitting a declaration in this case outlining some  
23 of those other projects?

24 A I have kind of the vague memory of that,  
25 and we may have done it more than once, and

1 meetings and that sort of thing, and I was not in a  
2 place that I could run to Denver and testify, and  
3 then both of our other board members don't live  
4 right there in Denver and easy to get to, so we did  
5 not continue the level of participation we had had  
6 in the projects for voting system implementation and  
7 deployment in Colorado.

8 And then when I came to North Carolina one  
9 of the first things that I worked on was the  
10 violation of secret ballot for early voting where  
11 all of the early voting, whether it was on the DREs  
12 or on absentee by mail ballots has an identifiable  
13 number on it, which, of course, violates the North  
14 Carolina Constitution.

15 So I spent time challenging both my  
16 current election board in Charlotte-Mecklenburg as  
17 well as the State Election Board on that.

18 Our intention was to do a big education  
19 campaign, to do lobbying with North Carolina  
20 legislators, and to file administrative challenges  
21 and hope that we did not have to file litigation,  
22 but that effort really did not continue. I've still  
23 got it on the back burner. We haven't solved the  
24 problem in North Carolina, and I am committed to  
25 getting back to that issue at the first opportunity.



1       meaningfully" --

2             A       Okay, let me take an example.

3             Q       Okay.

4             A       We had Colorado members in Boulder who  
5       asked us to testify by Zoom, to write letters, to  
6       call city council members on instant runoff voting.  
7       And I was kind of a well-known figure, that's  
8       putting it nicely, in Colorado as an opponent of  
9       instant runoff voting.

10            The mayor of Aspen race that I told you  
11       about when we started talking this morning was done  
12       by instant runoff voting, and it kind of went off  
13       the rails, and after that, the City of Aspen chose  
14       never to use instant runoff voting again.

15            But so -- because of my kind of deep  
16       knowledge of what was wrong with instant runoff  
17       voting, I was asked to take a very active role in  
18       helping our members out there fight Boulder's  
19       decision to use instant runoff voting. I could only  
20       do a minimal amount of work, and I think I might  
21       have made one phone call versus testifying, sending  
22       letters, et cetera.

23            Q       That inability to fully engage on that  
24       particular topic was due --

25            A       Yes.

1           Q       -- to the demands of the Curling case on  
2       you, correct?

3           A       Both the Curling case and the other  
4       related activities on Dominion BMD system that were  
5       not necessarily litigation.

6           Q       And you mentioned your RLA work with Cobb  
7       County was to help avoid double counting; is that  
8       correct?

9           A       I didn't mean to say risk-limiting audit  
10      if I did say risk -- I meant to say post-election  
11      audit if I -- and I was talking with some of our  
12      members and other active voters in Cobb County, and  
13      I urged them to ask for a tabulation audit after the  
14      runoff in a municipal -- I believe it was Marietta  
15      municipal election, and I helped them create their  
16      ask, and it was partly to make sure that double  
17      counting did not take place as it had in Cobb County  
18      in the Baker 01 precinct in November 2020.

19          Q       And so your role in that was not to work  
20      with the county election officials, but to provide  
21      information to individuals who wanted to work with  
22      those election officials; is that correct?

23          A       Yes, yes, I provided them with support,  
24      ideas, kind of the how-tos.

25          Q       And those were members and non-members,

1 correct?

2 A Yes. It was some people who probably  
3 considered themselves members, but, you know, wasn't  
4 in some kind of formal member context.

5 Q Let me ask you, if the Coalition received  
6 an injunction banning the use of Dominion BMDs, will  
7 the Coalition continue to educate its members and  
8 educate the voting public?

9 A Can you be more specific? Are you  
10 limiting -- like, an injunction just about the BMDs?  
11 Do you mind rephrasing the question? It's confusing  
12 to me.

13 Q Certainly. So my question is specifically  
14 if the Coalition was to receive an injunction  
15 banning just the ballot marking devices, would the  
16 Coalition continue to educate its members and the  
17 voting public?

18 A Regardless of whether or not we receive an  
19 injunction about just the BMDs, we will, as long as  
20 we're in existence, continue to educate members and  
21 voting public about election issues.

22 Q And that's true if CGG received all the  
23 relief that it's seeking in this -- in the Curling  
24 case, so you win on everything, CGG would continue  
25 to educate members and the voting public, right?

1           A       On -- it is one of our missions. It may  
2       not be about the issues of BMDs or the other relief,  
3       but we're not going to go out of business if we got  
4       all the relief we're looking for. We would -- we  
5       would always be working on educating members,  
6       non-members on -- I don't expect all election issues  
7       to go away if we got all the relief we're looking  
8       for. It would give us much more ability to focus on  
9       a broader range of topics at a more local level,  
10      which is really where we would prefer to work.

11          Q       So next I want to kind of move to  
12      categories of resources under this topic to really  
13      kind of dig in on. I know we've talked about  
14      financial resources that were diverted. What are  
15      the other resources that CGG does not have -- sorry,  
16      let me start over that again.

17                   What are the non-financial resources that  
18      CGG has had to divert as a result of the actions  
19      it's challenging in this lawsuit?

20          A       It's going to be primarily people's time  
21      and -- volunteer time and as well as paid time like  
22      our interns' pay and -- well, so much goes back to  
23      financial resources.

24                   For example, we'd get rid of our Logikcull  
25      account. Do you know what I mean by our Logikcull

1           A       I have two questions about your question.  
2       Are you asking me how much of their seven days a  
3       week is devoted to the case itself as opposed to  
4       other CGG activities or --

5           Q       I'm not. Let me ask the question a  
6       different way.

7           A       All right.

8           Q       So in terms of the activities that the  
9       volunteers are engaged in as part of their work as  
10      volunteers for CGG, do you have an estimate of the  
11      percentage of that time that is devoted to the  
12      Curling case?

13          A       This is just going to be a wild guess.  
14      I'm going to say that probably 50 percent of it  
15      would be related to the case. Probably 30 percent  
16      of it would be related to other Dominion Voting  
17      System and audit issues that are not in direct  
18      support of the litigation, and the remainder on  
19      other types of election administration activities.

20                 For example, as you probably know we often  
21      go to -- haven't had a chance to do this recently --  
22      State Election Board with proposed rules about  
23      election administration. Some of them would be BMD  
24      related; many of them would not.

25                 We didn't make it yesterday. We had plans

1 which I believe is a different topic on down the  
2 line, number 8.

3 Q Okay. Well, let me ask, so we're still,  
4 obviously, on topic 1 working through --

5 A Okay.

6 Q -- the diversion of resources, so I wanted  
7 to ask a few questions about this.

8 So, first of all, if you go to page 2,  
9 part 3, the statement of program service  
10 accomplishments, do you see that?

11 A Uh-huh.

12 Q And there's then three lines, 28, 29, 30,  
13 and 31, and then a total in number 32. Do you see  
14 that?

15 A I do.

16 Q And so the Coalition listed program  
17 service accomplishments in lines 28, 29, and 30 but  
18 didn't list anything for other program services on  
19 line 31, correct?

20 A That's correct.

21 Q So this gets a little confusing because  
22 line 28 references attachment 5, so I'm going to  
23 move down to the attachment 5, and then you see it  
24 says on page 14 program service accomplishment 1?

25 A Yes, I do see that.

1 Q And the statement there is: Advocating  
2 for voters' rights to a verifiable election, CGG  
3 litigated in federal court Northern District of  
4 Georgia against Georgia's use of an unverifiable  
5 paperless touchscreen system and educated Georgia  
6 voters on the importance of using an election system  
7 that either includes paper ballots or creates a  
8 paper trail.

9 Do you see that?

10 A I do.

11 Q Is that program service accomplishment  
12 referring to the Curling case?

13 A That particular one is referring to the  
14 Curling case.

15 Q And program service accomplishment 2  
16 there, attachment 6, statement that is: Worked to  
17 educate voters on the importance of election  
18 security using the example of the Georgia special  
19 election CD6 and the exposing vulnerability of the  
20 KSU Center for Election Systems, Georgia was one  
21 state identified by the NSA where voter registration  
22 systems were compromised and vulnerable to hacking.

23 Do you see that?

24 A I do.

25 Q Is that program service accomplishment

1 also referring to the Curling case?

2 A Well, the Curling case is one of the  
3 things that would have been encompassed by that  
4 statement.

5 Q Okay. Let me go -- ask about line 30  
6 then. The third program service accomplishment is:  
7 Supported rights of all citizens to access election  
8 records; paid for voting systems computer experts to  
9 identify and testify on security lapses in the  
10 Georgia elections system.

11 Do you see that?

12 A I do.

13 Q And that line -- is that line also  
14 referring to the Curling case?

15 A I believe that that was probably referring  
16 to what we call -- and, Mr. Tyson, I did not try to  
17 go delve into exactly which action this would have  
18 been, so I'm telling you to the best of my  
19 recollection, which could be wrong here, but --  
20 without checking with accountants, but what I  
21 believe that may be referring to is what we call  
22 Curling 1 that was an action we filed in May of  
23 2017, I believe it was May of 2017, in Fulton  
24 Superior Court.

25 Q Was that lawsuit also challenging the use



1 of touchscreen voting systems?

2 A It was.

3 Q So let me ask you on the questions here in  
4 part 4, there's a question here about section  
5 501(c)(3) organizations only and asking if the --  
6 line 47, did the organization engage in lobbying  
7 activities or have a section 501(h) election in  
8 effect during the tax year, and the box is checked  
9 for no. Do you see that?

10 A I do.

11 Q Has CGG -- well, let me ask first: Did  
12 CGG advocate for the passage or defeat of any  
13 legislation of the Georgia General Assembly in 2017?

14 A I don't believe so.

15 Q Do you know if CGG has ever advocated for  
16 the defeat or passage of legislation in the Georgia  
17 General Assembly?

18 A We have, yes. A minimal amount of our  
19 resources are devoted to that, but we have.

20 Q Let me mark the next 990 here. I want to  
21 look next at 2018.

22 (Exhibit Number 7 was marked for  
23 identification.)

24 BY MR. TYSON:

25 Q I've marked as Exhibit Number 7 the 2018

1 990. You see that?

2 A I do.

3 Q So I first want to go to again looking at  
4 the program service accomplishments, line number 2  
5 says, did the organization undertake any significant  
6 program services during the year which were not  
7 listed on the prior Form 990 or 990-EZ, and the box  
8 is checked as no. Do you see that?

9 A I do.

10 Q And the next line indicates, did the  
11 organization cease conducting or make significant  
12 changes in how it conducts any program services, and  
13 the box is checked no, correct?

14 A Correct.

15 Q Is it correct to say that CGG was engaged  
16 in the same activities in 2018 as it was in 2017?

17 A Generally, yes, and I -- I think we would  
18 look back to part 3, item 1 up there above your  
19 cursor that generally our activities have remained  
20 under that umbrella, but, of course, every single  
21 day there's something slightly different about our  
22 activities from the prior day.

23 Q Certainly.

24 So I want to then look -- you have in  
25 lines -- line 4 asks again for program service

1 touchscreen voting systems, correct?

2 A Yes.

3 Q Okay. And in 4A, at the end of that you  
4 indicate, educating Georgia voters on the importance  
5 of using an election system that includes either  
6 paper ballots or creates a paper trail.

7 Doesn't Georgia's Dominion system fall  
8 within that category?

9 A We certainly should have said something  
10 like an auditable paper trail, but it would not --  
11 it does not fall in the category of what was  
12 intended to mean a verifiable paper ballot.

13 Q And then 4C references a challenge to  
14 discriminatory policies on absentee ballots. Is  
15 this referencing the Martin case that we discussed  
16 earlier?

17 A It is referencing the Martin case, and it  
18 is also referencing the type of work that we did  
19 prior to that for both education and trying to get  
20 others to make the challenge instead of us and  
21 research around the issue.

22 So yes, it is a litigation and other  
23 things that were related to, in particular,  
24 Gwinnett's method of rejecting mail ballots.

25 Q And so it's correct then that each of the

1 program service accomplishments listed on this 990  
2 are, at least in part, litigation, correct?

3 A Yes, in part, that is true.

4 Q Let me take us back up to page 9. I'll  
5 try to zoom this in a little bit. It'll be easier  
6 to see.

7 So on part 8, Statement of Revenue, do you  
8 see this language?

9 A I do.

10 Q And so there's various categories of  
11 things -- of ways that money comes to the  
12 organization, and there's no amount indicated for  
13 membership dues, right?

14 A Correct.

15 Q And the only line item for revenue is all  
16 other contributions, gifts, grants, and similar  
17 amounts, right?

18 A Sadly so.

19 Q Then looking at page 10, part 9, Statement  
20 of Functional Expenses, column A is Total Expenses,  
21 column B is Program Service Expenses, and I wanted  
22 to ask first why in 11B for legal you have \$189,792  
23 and all of that is part of the Program Service  
24 Expenses, correct?

25 A Uh-huh. Yes.

1 Do you see that?

2 A Yes.

3 Q So I'm going to take us to page 283. Let  
4 it have a chance to catch up.

5 A All right.

6 Q So this is titled Declaration of Marilyn  
7 Marks.

8 Do you see that?

9 A I do.

10 Q Okay. And so in this declaration you made  
11 several different comments about how the Coalition  
12 goes about spending its resources, and that's what I  
13 want to dig into of what's going on here.

14 First, in paragraph 9 you indicate that:  
15 The Coalition receives frequent requests to assist  
16 in election technology controversies across the  
17 country. We decline involvement in the vast  
18 majority of the requests because of the almost  
19 impossible task of recruiting counsel with adequate  
20 subject matter expertise. A long learning curve  
21 required for counsel in voting systems litigation  
22 makes most such cases impractical to pursue.

23 Do you see that?

24 A I do.

25 Q So what method, if any, does CGG use to

1 determine which requests for assistance it rejects  
2 due to the difficulty of recruiting counsel and  
3 which it rejects due to the lack of resources to  
4 fulfill that request?

5 A You know, I don't know that you could ever  
6 parse that out in any type of objective way, you  
7 know? It's -- if the expertise was readily  
8 available and a lot of people had that expertise it  
9 would probably be easy to recruit attorneys to serve  
10 in the capacity of helping challenge election  
11 technology, election technology policy  
12 controversies. So I'm not sure how I would ever  
13 parse that out.

14 Q And I guess what I'm trying to understand  
15 is there were obviously projects you didn't engage  
16 in that you've testified were due to a lack of  
17 resources. Here you're indicating you don't engage  
18 in some projects due to the difficulty of counsel.  
19 I'm just trying to understand how you tell the  
20 difference for CGG.

21 A How do we tell the difference? Let me see  
22 if I can give you a recent example. We were asked  
23 to get involved with the new Internet voting bill in  
24 DC, and -- Washington, DC, and, you know, would we  
25 consider helping litigate against that, and right

1 literally.

2 Q Okay.

3 A I end up doing more things than they tell  
4 me that need to be done.

5 Q Okay. And so earlier we talked about that  
6 you were having to spend 90 percent of your time on  
7 items related to this case or more. Part of the  
8 reason for that is the way that the Coalition has  
9 chosen to litigate this case, correct?

10 MR. MCGUIRE: Objection to form.

11 A Can you tell me what you mean by "chosen  
12 to litigate"?

13 BY MR. TYSON:

14 Q So you've titled this section Coalition's  
15 Case Management Strategy, and in paragraph 24 you've  
16 outlined kind of the approach that you take and your  
17 interns take to help litigate the case.

18 A Right.

19 Q And my question is: The reason why you  
20 were spending as much time as you are on these cases  
21 is, at least in part, due to how the Coalition has  
22 chosen to litigate its cases, correct?

23 A I'm not sure that I would -- I would state  
24 it that way. You know, the way we would choose, all  
25 other things being equal, would be for much bigger

1 teams to be working on the things that I do, but we  
2 do not have the resources and the breadth of  
3 organization. It is not by choice but by just that  
4 is where we are as a matter of fact. There's no one  
5 else to do it, and we don't have the resources to  
6 expand greatly for legal teams, research folks.  
7 It's not by choice, it's just by necessity.

8 Q So, I guess in a perfect world you're  
9 saying if you were able to have the attorneys do all  
10 the typical attorney tasks you would have more time  
11 for other projects of CGG, correct?

12 A Yes, sure.

13 Q Okay. Go down to paragraph 37 next. So,  
14 again, further explaining kind of what CGG does, you  
15 say in paragraph 37: CGG organizes its litigation  
16 activities to be conducted at the lowest possible  
17 cost to make the most efficient use of attorney  
18 time. All activities that could be done by someone  
19 other than very experienced senior attorneys is done  
20 by CGG staff or volunteers.

21 See that, right?

22 A Yes.

23 Q And so you'd agree kind of I guess to our  
24 perfect-world scenario, if CGG did not utilize its  
25 staff or volunteers to conduct these litigation



1 activities, then that staff and volunteer time could  
2 be devoted to CGG's other projects, right?

3 A In a perfect world, yes.

4 Q And are you saying in paragraph 37 that  
5 the reason for the loss of staff and volunteer time  
6 for other CGG projects is this decision to litigate  
7 at the lowest possible cost?

8 A No, not really saying that. That would  
9 really not be our choice. My choice would be to  
10 have the financial resources necessary to put legal  
11 team, expert team, support team, research team on  
12 without having budgetary constraints have to be an  
13 every-minute consideration.

14 So, yes, we made this choice to litigate  
15 given the constraints. It's not that we chose to  
16 have, oh, let's just do this the cheapest way we  
17 possibly can; it's let's do this the only way we  
18 can.

19 Q Let me ask one more question about this.  
20 In paragraph 49 you say: This approach to  
21 economizing has permitted Coalition's attorneys to  
22 be efficient and generally only engage in activities  
23 requiring their technical and litigation expertise.  
24 It has, however, not been without its price, for  
25 these efforts have diverted significant resources of

1 the organization, in both time and money, away from  
2 other projects.

3 Do you see that?

4 A Yes.

5 Q And so you'd agree that this litigation is  
6 what has caused the diversion of significant  
7 resources of the organization away from other  
8 projects, right?

9 A It's one of the things that has, yes.

10 Q You say that it diverted significant  
11 resources of the organization, you refer to these  
12 efforts have done that. Can you quantify how much  
13 of the diversion was due to the efforts you  
14 reference in paragraph 49 and how much is due to  
15 other factors?

16 A No, I certainly don't have any kind of way  
17 to measure that because it certainly required all --  
18 you know, a large portion of the financial resources  
19 we have, but it's hard to put quantifiable numbers  
20 on the amount of volunteer time, for example, and  
21 then my time that has to get devoted to  
22 litigation -- this litigation effort as well as  
23 other problems being caused by the Dominion Voting  
24 System.

25 You know, we don't -- as I told you

1 before, we don't keep records of the volunteer time  
2 at that level, so I don't have an estimate for you.

3 Q Now, one of the things you indicated that  
4 CGG was limited in doing was educating the New York  
5 State Board of Elections on problems with BMDs.

6 Do you recall that?

7 A I do.

8 Q I want to have you look at what I marked  
9 as Exhibit 11, document that was produced to us in  
10 discovery.

11 (Exhibit Number 11 was marked for  
12 identification.)

13 BY MR. TYSON:

14 Q Do you recall a letter sent in January  
15 2021 to the New York State Board about BMDs?

16 A I recall it kind of vaguely, you know.  
17 Helping me remember it a little bit as you're  
18 displaying it.

19 Q And Exhibit 11 has your signature as  
20 executive director?

21 A It does, uh-huh.

22 Q And in this letter you reference the  
23 Coalition's involvement in the Curling case and  
24 Judge Totenberg's ruling from October 2020, correct?

25 A Uh-huh. Yes.

1 project that is related to CGG's goals here of  
2 election security, voter privacy, and election  
3 transparency?

4 A Well, certainly it is related to our  
5 goals. We try not to do anything that's not part of  
6 our goals. But, yes, it's certainly part of our  
7 goals, but it's certainly not the way we would  
8 choose to achieve our goals. It's a last resort.

9 Q And is the statement correct that the  
10 Curling case was a project of primary focus in 2021?

11 A Yes, just because of the consuming nature  
12 of it, it had to be a primary focus for us, not  
13 necessarily by choice, but by just the requirements  
14 of keeping up with the demands of the case.

15 Q And CGG was able to engage in this  
16 advocacy effort despite its involvement -- for the  
17 General Assembly legislation despite its involvement  
18 in Curling, correct?

19 A Yes, certainly not to the extent that we  
20 should have or would like to. Obviously as a  
21 501(c)(3) our lobbying efforts are limited anyway,  
22 but had we had more resources, more volunteer time I  
23 would have hoped that we would have done a better  
24 job of being effective at what we were trying to  
25 lobby against.

1 present relating to the laws, policies or protocols  
2 challenged in this action. And you were the  
3 designee for CGG on topic 2, correct?

4 A That's correct.

5 Q And did you review any documents  
6 specifically to get ready for this topic?

7 A No, I'm not sure that there were any  
8 documents that would have directly addressed this  
9 question.

10 Q And did you speak to anyone associated  
11 with CGG specifically to prepare for your testimony  
12 on this topic besides counsel?

13 A Not specifically for this purpose, no.

14 MR. TYSON: I think this one will be  
15 relatively quick since my focus is on just the  
16 document piece, and, Rob, I know you had some  
17 objection to this topic. I don't think we'll get to  
18 the objectionable scope here, but we'll see how we  
19 do.

20 BY MR. TYSON:

21 Q Ms. Marks, does CGG maintain a written  
22 annual budget?

23 A No, we do not.

24 Q Okay. And so there's no way to identify  
25 from an internal budget document spending on

1 specific categories; is that correct?

2 A That is correct, not from any type of  
3 document.

4 Q Okay. And so then it would be correct to  
5 say that there's not a document that identifies a  
6 diversion of resources from one project to another  
7 project within CGG, correct?

8 A I would not say that. I thought you were  
9 asking me about a budgetary document, but we have  
10 lots of documents that would indicate that, you  
11 know, we had to spend money on some type of  
12 expenditure that perhaps we were not expecting that  
13 we -- which we could have spent on something else.

14 Q I apologize, I was asking specifically  
15 about budget documents. I didn't add that  
16 qualifier. So --

17 A Sorry.

18 Q -- it's correct to say there are not  
19 budget documents that demonstrate CGG spending funds  
20 in a different way as a result of the allegations in  
21 the Curling lawsuit, correct?

22 A And that is because we do not prepare a  
23 formal budget. So, yes, there would not be  
24 amendments to the budget because we don't have a  
25 formal one.

1 post-2014 reorganization -- informal reorganization  
2 of Rocky Mountain Foundation, and we -- we certainly  
3 expanded beyond Colorado, and I guess it depends on  
4 what you consider the region, but that probably  
5 needs to be formally expanded in our -- in our work.

6 Q Okay. Thank you for that clarification.

7 On the third line there, there's an  
8 indication that: CGG will engage in litigation as  
9 well as provide monetary support for legal expenses  
10 to other organizations engaged in litigation on  
11 these issues.

12 Do you see that sentence?

13 A Yes.

14 Q And so part of CGG's mission is filing  
15 lawsuits, right?

16 A Well, I wouldn't -- I wouldn't say that it  
17 is our mission to file lawsuits. We know that it  
18 will be necessary at times.

19 Q Okay. And the lawsuits that are filed are  
20 in pursuit of the interests that CGG exists to  
21 protect, correct?

22 A Well, yes.

23 Q So let me next mark a portion of the CGG  
24 website. Are you responsible for what's posted on  
25 the CGG website?

1           A       Not me personally directly. I don't know  
2       how to do it. But speaking for the organization,  
3       yes, we as an organization are responsible for  
4       what's on the website, which is often out of date.

5           Q       Well then let me ask about this to see if  
6       this is in date or not.

7                   (Exhibit Number 15 was marked for  
8       identification.)

9       BY MR. TYSON:

10          Q       So this is a printout you can see at the  
11       bottom here Exhibit 15, right,  
12       coalitionforgoodgovernance.org.

13          A       Right.

14          Q       Is that the website of the Coalition?

15          A       Yes, it is.

16          Q       And this is a mission statement. Is this  
17       mission statement up to date and correct?

18          A       Let me take a look.

19          Q       Okay.

20          A       It is correct, and it looks like it was  
21       taken to a great degree from that tax-exempt purpose  
22       that you and I were just looking at.

23          Q       Thank you.

24                   So CGG is engaged in interests related to  
25       government transparency and accountability. That's



1 one of the things, correct?

2 A One of the things, yes.

3 Q And elections are listed specifically,  
4 correct?

5 A Yes.

6 Q Does a jurisdiction's use of BMDs relate  
7 both to the elections and the government  
8 accountability and transparency interests of CGG?

9 A As well as due process and equal  
10 protection, yes.

11 Q So advocacy around the use of electronic  
12 voting relates to several of CGG's interests, right?

13 A Yes.

14 Q When you say in that second paragraph, "we  
15 will engage in litigation," that litigation is a  
16 major function of CGG, at least as to its activities  
17 right now?

18 MR. MCGUIRE: Objection to form.

19 A Litigation is certainly consuming a huge  
20 amount of our resources right now, but if we go  
21 ahead and read the rest of that sentence, inform  
22 legislative policy, and then the next sentence we  
23 will be using education, communications, obviously  
24 those are much preferable for any organization than  
25 to engage in litigation.

1                   So yes, litigation is one avenue, but it  
2                   is our -- our least favorable choice.

3           BY MR. TYSON:

4           Q       Understood.

5                   Now, CGG is a Colorado corporation,  
6           correct?

7           A       Incorporated in Colorado, yes.

8           Q       Is CGG registered as a charity in Georgia?

9           A       We are.

10          Q       So let me next mark Exhibit 16.

11                   (Exhibit Number 16 was marked for  
12           identification.)

13          BY MR. TYSON:

14          Q       These are articles of incorporation for a  
15           nonprofit corporation from the Colorado Secretary of  
16           State. Do you see that?

17          A       Correct.

18          Q       And this is for the corporation Rocky  
19           Mountain Foundation, Inc., right?

20          A       Right. Yes.

21          Q       Do you know, are these the original  
22           articles of incorporation for what is now CGG?

23          A       I believe that they are. At least  
24           according to our records they are. We did not -- we  
25           were not management at the time they were filed.

1 advance the constitutional liberties and individual  
2 rights of citizens with an emphasis on preserving  
3 and protecting those private rights of its members  
4 that are exercised through public elections.

5 Do you see that?

6 A I do.

7 Q And so is it correct that advancing  
8 individual rights through proper election  
9 administration is a key part of CGG's mission?

10 A Yes, sure.

11 Q Okay. Then there's a -- paragraph 21  
12 lists -- begins, "Coalition serves its purpose in  
13 multiple ways, including by," and then lists out a  
14 number of different things that are there, which if  
15 you can just take a minute to read through those for  
16 me.

17 A Okay. Okay.

18 Q You'd agree with me CGG sometimes serves  
19 its purpose by filing litigation, right?

20 A Sometimes, yes.

21 Q So what I want to do is kind of walk  
22 through these different pieces you list in paragraph  
23 21. Since the filing of Curling, CGG has provided  
24 information and education to its members, correct?

25 A Yes.

1 Q And since the filing of Curling, CGG has  
2 served as a nonpartisan and informational resource  
3 for the public, press, campaigns, candidates, and  
4 political parties, right?

5 A We have.

6 Q And since the filing of Curling, CGG has  
7 monitored nationwide developments in election law  
8 and technology, right?

9 A Not nearly as much as we used to, but we  
10 have done that to the extent possible.

11 Q And since the filing of Curling, CGG has  
12 provided speakers for events at educational  
13 institutions, right?

14 A Quite frankly, that has declined even  
15 since this was written because we've had to -- I  
16 think this year we've declined all invitations, and  
17 most of last year we had to decline most  
18 invitations, but we still -- when we can, we do it.

19 Q Okay. And CGG, since the filing of  
20 Curling, has provided commentary from its leadership  
21 on election issues, right?

22 A We have done that, but we have been unable  
23 to do it recently. And what I mean by this in that  
24 statement was generally op-eds, and I have been  
25 asked to write many a op-ed in this last six months

1 and have been unable to.

2 So, yes, done it, but we have not done it  
3 nearly as consistently and as actively as we want  
4 to.

5 Q Since the filing of Curling, CGG has  
6 collaborated with voting rights and election  
7 integrity initiatives with other nonpartisan profits  
8 (sic) and academics, right?

9 A Many of those activities are on hold right  
10 now, but we have done some of this, yes.

11 Q And to kind of finish out here, since the  
12 filing of Curling, CGG has developed and shared  
13 research about election problems, right?

14 A That we have done extensively, yes.

15 Q And since the filing of Curling, members  
16 and prospective members of CGG have participated in  
17 the electoral process through poll watching,  
18 attending public meetings, and other civic  
19 activities, right?

20 A That has declined a lot in the last six  
21 months, but yes, we have engaged in that, you know,  
22 to some extent in every year since 2017.

23 Q Let me move next to topic number 4. Topic  
24 4 is the organization's organizational structure,  
25 including individuals who have the authority to make

1 that makes any sense.

2 Q It does.

3 Did you speak to anybody else besides  
4 Ms. Dufort and Ms. Nakamura to prepare specifically  
5 for this part of the deposition, this topic?

6 A You broke up during part of that sentence.  
7 It sounded like you said Ms. Dufort and  
8 Ms. Nakamura; is that what you said?

9 Q Yes, I was saying besides Ms. Dufort and  
10 Ms. Nakamura, did you speak to anyone to help  
11 prepare for this topic?

12 A No, I did not.

13 Q And I don't want us to repeat, I think  
14 we've covered a lot of this ground already in terms  
15 of specific activities, but I did want to just try  
16 to understand do you have a sense of what percentage  
17 of the organization's work is dedicated to election  
18 integrity or election efforts -- not election  
19 integrity, just election efforts?

20 MR. MCGUIRE: Objection to form.

21 A I have no documents on such, and it would  
22 just be a really rough idea of probably 90 percent  
23 election related. Not necessarily BMD related or  
24 Dominion voting related, but election related right  
25 now probably 90 -- 90 percent, but not -- not

1 because that's the only thing we want to do.

2 As I mentioned, I really want to be doing  
3 some open -- open records -- excuse me -- yes, open  
4 records and open meetings issues.

5 BY MR. TYSON:

6 Q And so the approximately 10 percent that  
7 goes to other projects, what categories of -- are  
8 those projects?

9 A I would say that some of that would be  
10 fundraising, some of that will be just kind of  
11 general administrative stuff like getting D&O  
12 insurance or getting the accountants lined up to do  
13 our audit -- or excuse me, our 990, but also where I  
14 have spent some time, a little bit more these past  
15 two years that I did not do so much in previous  
16 years has been a little more involved in lobbying  
17 for some legislation in Georgia, ballots as open  
18 records, ballot images, and then trying to make  
19 whatever changes we could, not necessarily  
20 successful at it, in bills like SB202 and its  
21 predecessors.

22 So while we spend absolutely no money on  
23 lobbying other than some small portion of whatever  
24 an e-mail costs, we don't spend any significant  
25 money on lobbying, but I do spend some time on

1 course.

2 BY MR. TYSON:

3 Q Certainly. I think we'll be able to  
4 address that as we go, so thank you for making note  
5 of that.

6 So, Ms. Marks, other than filing this  
7 lawsuit, has CGG undertaken any efforts to address  
8 the laws, policies, and protocols it says are  
9 unconstitutional?

10 A Yes.

11 Q And what are those?

12 A Well, for one, we have tried to do  
13 communications with lawmakers certainly both at the  
14 time that laws were being promoted in the general  
15 assembly about ballot marking devices going back to  
16 2018 and then 2019, we've talked to lawmakers both  
17 formally in hearings, through e-mails, through  
18 personal telephone conversations, through visits  
19 with lawmakers. The same would be true of we've  
20 talked to election officials who we felt they need  
21 to be both educated on the -- on the issues and who  
22 would hopefully lobby for avoiding BMDs and  
23 promoting effective audits.

24 You know, other -- other activities would  
25 have included educating members on the problems with



1 the BMDs, and not only BMDs but necessity for  
2 audits.

3 Let's see. I'm going back to the question  
4 to make sure that I'm remembering all the things  
5 you're asking about.

6 Okay. So we would have done lobbying, we  
7 would have done education, we would have also  
8 participated in generating -- crafting ourself  
9 proposed rules that we have sent to the secretary --  
10 excuse me, to the State Election Board around some  
11 of these topics.

12 Oh, another thing that we've done, we  
13 participated in the SAFE Commission meetings. We  
14 went to almost all of the SAFE Commission meetings  
15 to try to persuade the decision makers there, which  
16 did not just include lawmakers but election  
17 officials that the BMDs should not be required --  
18 should not be accepted, and there should be  
19 hand-marked paper ballots and audits, and we've also  
20 talked to a variety of county election officials. I  
21 may have already covered that. But there would have  
22 been e-mails as well as personal talks to election  
23 officials in the counties about these topics.

24 Q Thank you.

25 A Now, there could be some other -- some

1 would be doing fundraising year in and year out  
2 regardless of efforts of what we were doing, but,  
3 yes, it's taken a lot of resources to get this far  
4 with this litigation.

5 Q And CGG has used its involvement in the  
6 Curling case to help raise money, correct?

7 A Yes, uh-huh, in showing the need for what  
8 we were asking donors to give, certainly.

9 (Exhibit Number 19 was marked for  
10 identification.)

11 BY MR. TYSON:

12 Q Show you what we marked as Exhibit 19.  
13 This is another e-mail produced to us dated August  
14 20th, 2020.

15 Do you see that?

16 A I do.

17 Q And it opens with: Thanks for your  
18 generous donation to the Coalition. We have great  
19 progress to report.

20 Could you take a minute and look, is this  
21 an update sent to donors, or do you know to whom  
22 this e-mail was sent?

23 A I assume it was sent to donors.

24 Q Okay. And in this e-mail there's a  
25 request to consider making a donation today to help

1 fund the efforts in the Curling case, right?

2 A Yes. Certainly not limited to that, but  
3 yes.

4 Q Let me -- there's another exhibit we'll  
5 mark as Number 20.

6 (Exhibit Number 20 was marked for  
7 identification.)

8 BY MR. TYSON:

9 Q This is another e-mail produced to us. I  
10 believe it's September 13th, 2020.

11 Do you see that?

12 A I do.

13 Q And it says, Dear friends of Coalition for  
14 Good Governance. Who does that constitute, do you  
15 know?

16 A I don't. My guess is what we did is we  
17 expanded beyond people who had donated in the past,  
18 and I'm guessing it would be -- I don't remember  
19 right now, but I'm guessing it would be people on  
20 our mailing list, other mailing lists we may have,  
21 we probably even sent to legislators, et cetera.

22 And when we say "friends," that was just a  
23 general category of having a friendly opening to --  
24 in the salutation.

25 Q What I want to ask here, there's an ask

1 here: Can you make a contribution now to help with  
2 attorneys' fees and experts' work.

3 You see that?

4 A I do.

5 Q And so CGG is asking for money to help pay  
6 for attorneys' fees and experts' work, right?

7 A As we always do, yes.

8 Q And then you make the reference: Can we  
9 count on you to support the essential battle for  
10 simple, secure, and defensible elections?

11 Do you see that?

12 A Yes.

13 Q And that battle for simple, secure, and  
14 defensible elections is part of the work that CGG  
15 undertakes, right?

16 A It is part of the work, yes.

17 Q So let me -- let's go back to the website  
18 here. We'll mark as Exhibit 21, this is the  
19 coalitionforgoodgovernance.org/donate.

20 Do you see that?

21 (Exhibit Number 21 was marked for  
22 identification.)

23 A I do.

24 BY MR. TYSON:

25 Q And is this the donate page that you would

1 Twitter account.

2 A Okay. I'm not remembering all this off  
3 the top of my head without a little more.

4 BY MR. TYSON:

5 Q And maybe I can short-circuit a little  
6 bit.

7 A I'm not saying I didn't do it. I just  
8 need to remember what this is about.

9 Q So my only question relates to these last  
10 few tweets in this sequence: We at Coalition Good  
11 Gov warned of this problem in 2018, 2019, and  
12 continue our federal lawsuit (Curling v.  
13 Raffensperger) to seek auditable elections-no  
14 hackable touchscreens. Georgia should use  
15 hand-marked ballots that cannot be manipulated.  
16 Please help us, and there's a link to something  
17 that's bit.ly/CGGDonate.

18 You see that?

19 A I do.

20 Q And so this is a request for a donation to  
21 the Coalition, correct?

22 A That's correct, yes.

23 Q What I want to ask about is an individual  
24 with the name @strategyPhD replies and says: I just  
25 donated some cash for this excellent work that

1 you-all are doing. I know it's not a lot, but every  
2 20 bucks here or there will make a difference. Keep  
3 up the democracy-saving work.

4 Then you reply: Thank you so much. We  
5 know how to stretch a dollar and put it to critical  
6 use. We have no overhead, and all donations go for  
7 direct costs of litigation.

8 Is that a correct statement of how CGG  
9 uses its resources?

10 A It is not technically correct. Right now  
11 the vast majority of the resources that we get in  
12 are having to go to support the litigation, but  
13 literally we have a tight -- when I say we have no  
14 overhead, overhead in the way most people think of  
15 overhead, offices, paid -- salary, you know, most of  
16 the work our interns are doing certainly is for  
17 litigation support.

18 And so my point was here that the vast  
19 majority of resources are being directed to  
20 litigation support, not that we don't spend a dime  
21 on something like an accounting -- like accounting  
22 fees.

23 Q I'm going to mark what I marked as 25.

24 (Exhibit Number 25 was marked for  
25 identification.)

1 the Curling case as a reason to donate to the  
2 organization?

3 MR. MCGUIRE: Object to form.

4 A There are so many parts of that sentence.  
5 Had success. Sometimes I think that, actually, we  
6 haven't had success in raising money compared to  
7 what we need.

8 So have we raised money because people  
9 support the litigation, yes. Have we raised money  
10 because they support more generally what we do, yes.  
11 Have we raised money because they support our  
12 education efforts, the non-litigation efforts, the  
13 research efforts, yes, that too. But people don't  
14 send us a check saying, you know, 30 percent of this  
15 is for litigation, and 40 percent of it is for  
16 education.

17 BY MR. TYSON:

18 Q Let me go back to Exhibit 8. This is page  
19 17 of the schedule A on the 2019 990.

20 A Yes.

21 Q You'd agree with me that from 2016 through  
22 2019 support for CGG went up every year, right?

23 A During that period, but -- yes.

24 Q Curling was filed in 2017, correct?

25 A Correct. I was just -- I was just

1 nature of membership in the organization, including  
2 how individuals become members, any obligations of  
3 members, and any benefits offered by the  
4 organization to its members. And you are the  
5 designee for topic 9, correct?

6 A I am.

7 Q And did you review any documents to get  
8 ready for this particular topic?

9 A No, I did not.

10 Q Did you speak to anyone affiliated with  
11 CGG to prepare for this particular topic?

12 A Jeanne Dufort and I might have talked  
13 about this topic. I believe we did.

14 Q Can you think of anybody else besides  
15 Ms. Dufort?

16 A No, not that I would have talked to about  
17 this topic.

18 Q What I want to do is start back to the  
19 third amended complaint, which is Exhibit Number 3.

20 A Mr. Tyson, that would be in addition to  
21 counsel. Okay?

22 Q Certainly. And I apologize, I don't  
23 definitely want to discuss theories with counsel.

24 I want to ask you in paragraph 19 of the  
25 third amended complaint, the Coalition says:



1 Individuals become members of Coalition by providing  
2 their contact information and indicating a desire to  
3 associate with the organization.

4 Is that still an accurate explanation of  
5 how an individual becomes a member of the Coalition?

6 A It is generally, but it shouldn't be  
7 thought of as some kind of precise universal form of  
8 how people associate with the organization. Many  
9 times it's a phone call to me saying, hey, I want to  
10 be part of what you're doing and count me in. It's  
11 not like there's some form that they fill out for  
12 contact information. And so, you know, our members  
13 come to us in any variety of rather informal means.

14 Q So if someone called you and said, I want  
15 to be part of what you're doing, would you consider  
16 that -- is that person then a member of CGG from  
17 that point?

18 A Depending on how they express it, yes.  
19 Then what I would do is say, hey, Mary Eberle, you  
20 know, put them on our mailing list, and here's who  
21 they are.

22 Q I'm not -- I want to be clear I'm not  
23 asking you for this, but does CGG maintain a list of  
24 its members?

25 A I will have to say that our list

1 maintenance has kind of gone by way of many of our  
2 other administrative activities. It is -- no, we --  
3 we do not have a current list. The list that we  
4 have are -- it's outdated. I know it has deceased  
5 people on it. It hasn't been updated in quite a  
6 while.

7 Q Okay. And so how would CGG go about then  
8 right now determining if someone is a member or not?

9 A If it were important, as I heard one  
10 person express, hey, being part of CGG is kind of  
11 like -- it's a lot like being a member of the  
12 Libertarian Party or Republican Party or Democratic  
13 Party, there are no real requirements to, you know,  
14 you've got to pay fees. No, there are no fees.  
15 And, you know, people -- people come and go as they  
16 may favor what we're doing or get irritated with  
17 what we're doing, and so there is not some kind of  
18 strict you're in or you're out.

19 For purposes of this litigation when it is  
20 necessary to demonstrate that somebody really is an  
21 active member of the organization, we make sure that  
22 that is clear, and we put it in declarations, et  
23 cetera, but other than that, we do not have rigid  
24 requirements.

25 And one reason we don't need to do that is

1 because there are no dues that go along with it.  
2 Say, like, NAACP has dues requirements. We don't  
3 have that.

4 Q Is there any affirmative obligation on the  
5 part of anyone to stay a member of CGG?

6 A Certainly not.

7 Q In paragraph 19 you say that members  
8 receive informational communications from Coalition.  
9 Does the Coalition or CGG consider everyone who  
10 receives informational communications from them to  
11 be a member?

12 A No. No.

13 Q Does CGG have a separate list for  
14 informational communications for members and  
15 non-members?

16 A That's not really the way that we would --  
17 we have multiple different, for example, e-mail  
18 lists, and so we don't divide it up into members,  
19 non-members.

20 Q And so the various e-mail lists, there's  
21 no members e-mail lists out there, correct?

22 A There is an e-mail list that we -- that  
23 would include all of the members, but it also  
24 includes other people who we -- who would kind of  
25 fall in that category of friends and people who

1 might be potential members, but it's -- I don't  
2 remember exactly what we call that e-mail list.

3 Q But you couldn't distinguish on that  
4 e-mail list between someone who's a member and  
5 someone who's a friend essentially?

6 A Or somebody who -- or even somebody who  
7 has said, I don't want to have anything to do with  
8 you guys anymore. No, there's not -- on that e-mail  
9 list there would not be a way to determine that.

10 Q When you say "determine that," you're  
11 referring to there's no way to --

12 A Determine who would just say, oh, this guy  
13 told us to get lost, and he's not a member anymore.

14 Q Got it. No way to distinguish members and  
15 non-members on that --

16 A Not on that e-mail, that's correct.

17 MR. MCGUIRE: Marilyn, I'm just going to  
18 ask you let him finish his questions and don't talk  
19 over him.

20 A Sorry. Apologize.

21 MR. MCGUIRE: Thanks.

22 MR. TYSON: Thank you, Rob.

23 BY MR. TYSON:

24 Q So I want to ask you next, you say:  
25 Members can benefit from Coalition's facilitation of

1 members' individual participation in civic  
2 activities that are germane to the organization's  
3 purpose, such as poll watching, auditing election  
4 results, and publishing opinion pieces.

5 Do you see that?

6 A I do.

7 Q And can non-members also benefit from  
8 Coalition's facilitation of participation in civic  
9 activities that you listed here?

10 A Of course we believe everyone could  
11 benefit from that work.

12 Q And can -- referring to this last  
13 sentence, can non-members utilize Coalition as a  
14 resource to answer a wide range of questions about  
15 voting rights, voting processes, open meetings law,  
16 public records law, petition process- -- recalls,  
17 petition processes, election legislation, and how to  
18 challenge election issues they encountered?

19 A Certainly, you know, not everybody has to  
20 be a member who we talk to, and so, yeah, we would  
21 hope to be of service to people who we would hope to  
22 recruit as members or whether it's press,  
23 legislators may utilize Coalition in that way as  
24 examples.

25 Q So the categories alleged in the last

1 would -- we would need is for you to be willing to  
2 testify as to what happened and to be a member of  
3 our organization. There are no membership fees or  
4 anything like that.

5 Do you see that?

6 A Yes.

7 Q And is that an accurate statement of, as  
8 we've been discussing, how someone becomes a member?

9 MR. MCGUIRE: Object to form.

10 A No, we don't ask people to come testify in  
11 federal court to become a member.

12 BY MR. TYSON:

13 Q But it is correct that there are no  
14 membership fees or anything like that to be a member  
15 of CGG, correct?

16 A There are no membership fees, and what I  
17 was just generally and informally saying here is you  
18 don't have to write a check to be part of CGG.

19 Q And is Mr. Blosser currently a member of  
20 CGG?

21 A We have not communicated with him in a  
22 while. I believe that he may have moved out of  
23 state and haven't heard from him in a while.

24 Q So today you don't know whether  
25 Mr. Blosser is a member or not?

1           A     You know, there's no reason to think he's  
2     not a member. I'm just trying to say that I haven't  
3     had any recent communication with him. He may be  
4     back in Georgia for -- because I know that was his  
5     intention to return, but we just haven't heard from  
6     him much.

7           Q     He wasn't a member when this lawsuit was  
8     filed, correct?

9           A     No, not -- I think that is -- that's  
10    correct, he was not.

11          Q     Let me ask you next what I've marked as  
12    Exhibit 27. These are the Coalition Plaintiffs'  
13    responses to interrogatory -- supplemental response  
14    to interrogatory number 12.

15                   (Exhibit Number 27 was marked for  
16    identification.)

17    BY MR. TYSON:

18          Q     Do you see that?

19          A     Yes.

20          Q     And do you recall did you verify these  
21    interrogatories, or do you know?

22          A     I don't think that I have verified the  
23    interrogatories.

24          Q     Okay. The interrogatory asked to identify  
25    all members of the Coalition for Good Governance

1           Q       Interrogatory number 13, the Coalition was  
2       asked to identify the responsibilities or  
3       obligations entailed in being a member of Coalition  
4       for Good Governance and any benefits conferred by  
5       such membership.

6                     Do you see that?

7           A       I do.

8           Q       And you give an answer -- Coalition gives  
9       some answers here. Does every member of the  
10      Coalition for Good Governance have to work together  
11      to promote the goals of the organization?

12          A       No.

13          Q       Does --

14          A       It's not meant -- that was not meant to be  
15      an obligation.

16          Q       Okay.

17          A       It just meant to be basically about the  
18      spirit and the benefits of being a member, not an  
19      obligation of a member.

20          Q       Okay. Does CGG provide voter education  
21      for individuals who contact it who are not members?

22          A       Not every person, but yes, many people we  
23      do.

24          Q       Okay. Does CGG provide non-members with  
25      poll watcher training?



1           Q     In referring to the documents you filed in  
2     the case, is CGG relying on the impact on all  
3     Georgia voters for determining there was an impact  
4     on its members?

5           A     No.

6           Q     Okay. What specifically -- how  
7     specifically have CGG members been impacted by the  
8     practices challenged in this action?

9           A     Well, I think you -- we need to talk about  
10    each individual that you're referring to here  
11    because there's not a one-size-fits-all type of  
12    injury.

13          Q     Okay. Well, let's go to Exhibit 27 then.  
14    How has Mr. Blosser been impacted by the practices  
15    challenged in this action?

16          A     So if I recall Mr. Blosser's situation, it  
17    was that he attempted to vote in the 2017  
18    Congressional District 6 election, and when he  
19    arrived at his polling place, even though it was the  
20    same polling place, and he was voting from the same  
21    address as he had been for years, the pollbook  
22    showed that he was not an eligible elector, and he  
23    was not permitted to vote even by provisional  
24    ballot. He was turned away even though he was an  
25    eligible registered elector who had not previously

1 voted, and it appeared to be the so-called software  
2 glitch in the Express pollbooks that caused  
3 Mr. Blosser not to be able to vote, is my  
4 understanding.

5 Q What is the impact on Ms. Clark in  
6 Gwinnett County?

7 A The -- I can name at least one instance,  
8 but I would expect that there are more, and that the  
9 one I'm remembering is that she went to vote, and  
10 there were problems again with the ExpressPoll units  
11 where she was told that, no, you are not registered  
12 here, you're supposed to be at a different polling  
13 location. And she argued with them for quite a long  
14 time. They kept saying no, no, no, you have to go  
15 to a different polling location. She knew that she  
16 did not belong at a different polling location.

17 She spent an extraordinary amount of time  
18 and energy talking to person after person, calling  
19 the Gwinnett office, and eventually for some reason  
20 they claimed, well, wow, your name just popped up  
21 now in the book, and now you can vote.

22 But, of course, we never knew what caused  
23 the name to just now -- and I'm saying in quotes  
24 just now pop up in the book, and that she was denied  
25 time after time after time the ability to vote at

1 feasible, possible, if they get their mail ballots  
2 on time. For most of them they believe that mail  
3 ballots are a more secure form of voting.

4 Q And CGG advises its members to vote using  
5 absentee by mail ballots, correct?

6 A Generally, yes. It may not fit everyone's  
7 particular circumstance, but yes, it is preferable.  
8 We do not like mail ballot voting generally, and, of  
9 course, I'm over-generalizing here. Generally we  
10 don't like mail ballot voting, but we believe it is,  
11 with all its difficulties, preferable to voting on  
12 BMDs.

13 Q What is the injury that Ms. Forney  
14 suffered?

15 A I'm not necessarily referring to a  
16 specific declaration. I'm -- because I didn't  
17 review that declaration, but I can tell you  
18 generally that she is highly upset about the lack of  
19 privacy in voting.

20 She is a prominent physician in town and  
21 has often run into her patients in polling places,  
22 and she -- she wants her privacy as to who she's  
23 voting for. And generally she tries to vote by  
24 absentee mail ballot but hasn't always been able to  
25 get the ballot back in time, get the request in in

1 time.

2 So I know that one of her -- one of her  
3 concerns is privacy, and I also think that the --  
4 just the hassle of -- and particularly in Fulton  
5 County of trying to get a mail ballot and get it on  
6 time has been an injury that she has experienced.

7 There may be others that I'm not  
8 remembering from her declaration right now. I did  
9 not review all these declarations before -- before  
10 this -- before this deposition today.

11 Q And I believe you indicated Ms. Walker did  
12 not submit a declaration; is that right?

13 A That is correct.

14 Q And what is Ms. Walker's injury?

15 A It would also be ballot privacy or ballot  
16 secrecy. And she has voted on BMD and complained to  
17 me about the lack of privacy in the BMD.

18 Also, you know, she knows about the  
19 security concerns and is concerned about whether or  
20 not her vote is counting properly.

21 Q Ms. Walker is also indicated as a member  
22 from August of 2014.

23 A Yes.

24 Q Did she join the organization at the time  
25 it was still the Rocky Mountain -- sorry, I've lost

1 Q Does CGG know of any person in the state  
2 of Georgia who was not able to vote as a result of  
3 the State's use of the Dominion BMDs?

4 A Dominion BMDs. Because of the State's use  
5 of Dominion BMDs. If we are limiting the question  
6 to because of the State's use of BMDs, no, I do not  
7 know anyone who was unable to vote for that reason.

8 Q Does CGG know of any person in the state  
9 of Georgia who was not able to vote because of the  
10 lack of audits CGG claims are necessary?

11 A We don't claim that audits are necessary  
12 in order to be eligible to vote, but we don't know  
13 anybody who was turned away from being able to vote  
14 because of inadequate audits.

15 Q Does CGG have knowledge of any voter whose  
16 votes -- sorry, I just asked that question.

17 Let's move to -- actually, one more on  
18 this one. Does CGG have knowledge of any voter in  
19 the state of Georgia who was not able to vote as a  
20 result of the use of Dominion scanners?

21 MR. MCGUIRE: I'm going to object to form  
22 because it's, I think, vague, ambiguous.

23 A That question doesn't really sound too  
24 logical to me. I don't know how it could be that a  
25 scanner would keep someone from voting, but no, I

1 Q Is it your custom -- I'm sorry.

2 A -- to see what contest they were eligible  
3 to vote and were not able to vote because of casting  
4 a provisional ballot because of a problem with the  
5 system.

6 Q Is it your testimony that the Poll Pads  
7 are Dominion voting equipment?

8 A Yes.

9 Q Are they manufactured by Dominion?

10 A I don't think Dominion manufactures any of  
11 their own equipment, but they are certainly  
12 encompassed in our definition of the Dominion Voting  
13 System, the Poll Pads are.

14 Q Then let me just make sure we're all on  
15 the same page here. So does CGG have any knowledge  
16 of the identity of any voter whose vote was not  
17 counted as a result of the use of Dominion BMDs,  
18 Dominion precinct scanners and Dominion central  
19 count scanners, and the Dominion electronic  
20 management system?

21 A I'm thinking about that for just a moment.  
22 In terms of specific identity for particular ballots  
23 that we know were not counted, while we can go back  
24 to the home precincts, I don't think we know of any  
25 particular voter whose ballot we can identify -- we

1 wouldn't -- we wouldn't go so far as to identify if  
2 we could -- that was -- that was not counted.

3 In fact, I have heard some people talk  
4 about that they believe that their write-in votes  
5 for qualified candidates were not counted, and we  
6 have actually hesitated to go try to do the research  
7 to find out, which we probably -- we might be able  
8 to do, but we've hesitated to do it because we felt  
9 like that was too much intrusion on ballot secrecy.

10 Q We've been going on for a little while,  
11 Ms. Marks. Do you want to take another quick break?

12 A If you wish. How much time have we been  
13 on the record?

14 MR. TYSON: We can go off the record.

15 THE VIDEOGRAPHER: The time is 5:30 p.m.  
16 We're off the record.

17 (Recess 5:30-5:36 p.m.)

18 THE VIDEOGRAPHER: The time is 5:36 p.m.  
19 We're on the record.

20 BY MR. TYSON:

21 Q Thank you, Ms. Marks. I have consulted  
22 over the break here to try to streamline this a  
23 little bit and make this a little bit easier to skip  
24 over a few things that we've pretty much covered, so  
25 I'm going to skip ahead to topic number 19.

1 identification.)

2 BY MR. TYSON:

3 Q Do you see -- this is another Twitter  
4 thread from your MarilynRMarks1 account?

5 A Yes. Does this have a date on it?

6 Q This is January 1, 2021.

7 A Okay. All right.

8 Q And what I'm trying to get to is someone  
9 responded and said South Carolina and Kentucky are  
10 the states that should be audited, and you said:  
11 South Carolina is like Georgia. It uses unauditable  
12 BMD touchscreen machines. We can never ever know  
13 who won in South Carolina or Georgia because of the  
14 use of those machines in the polling places.

15 A Correct.

16 Q You see that?

17 A I do.

18 Q Do you agree with that statement?

19 A I do.

20 Q Is CGG's contention that we can never  
21 know -- is it -- sorry, let me start over again.

22 Is it CGG's contention that we cannot know  
23 who won in Georgia because of the use of Dominion  
24 BMDs in the polling places?

25 A Yes. And when we say "who won," what I



1 many of the records are missing, but at least we do  
2 have a record, and that could be determined.

3 Q So just -- just so I'm clear, that was a  
4 long answer, I want to make sure I understand CGG's  
5 contention about this.

6 A Okay. All right.

7 Q If an individual relying on CGG's reasons  
8 for questioning elections conducted on BMDs  
9 questioned the outcome of an election, you would  
10 agree that person had a reasonable basis to do so,  
11 right?

12 A I'm not going to tell you that as a  
13 blanket proposition, no. Let's say that we had an  
14 election that used, I don't know, 15 percent BMDs  
15 and most people voted by mail and somebody  
16 challenged the election, I would not make a blanket  
17 statement that there was a reasonable basis to  
18 challenge. It certainly depends on the  
19 circumstances. You have to be really -- you have to  
20 look at all the facts before we can say there was a  
21 reasonable basis for challenging.

22 I mean, you mentioned Garland Favorito.  
23 Some of the wild claims that he is making,  
24 absolutely there's no reasonable basis in it, and,  
25 in fact, there are a bunch of lies coming out.

1 That's -- no, that's not reasonable.

2 Q Does CGG question the outcome of the  
3 November 2020 presidential election?

4 A No, I don't think you would have ever seen  
5 us question that. I think we have been consistent  
6 before, during, and after this election, and before  
7 the election we said, just as with all BMD  
8 elections, we will never be able to know the  
9 outcome.

10 We've said that -- we've said that since  
11 before the BMDs were ever even purchased that  
12 because of the design we would never be able to  
13 assure ourselves of the outcome of any election  
14 primarily conducted with BMDs. We would say the  
15 same, of course, of the November 2020 election and  
16 all before and after elections, and -- oops, wait a  
17 minute. I messed up my screen just now. Hold on.  
18 Okay. I'm back.

19 But as it -- and as I say, we've been  
20 quite consistent. We have huge objections to the  
21 massive errors in the audit and the massive  
22 tabulation errors, but still, given the work we've  
23 done today, and it's not definitive, we have not  
24 seen anything that, based on Georgia's method of  
25 tabulating votes, that would change the outcome.

1 results reflect the will of the voters, absolutely.

2 BY MR. TYSON:

3 Q And so is it CGG's contention that voters  
4 in Georgia have a reasonable basis to question each  
5 election conducted in Georgia as long as we use  
6 Dominion BMDs?

7 A So long as Dominion BMDs are the primary  
8 source of votes cast, yes.

9 Q Let me ask you about some additional -- I  
10 want to turn to the Coalition's request -- responses  
11 to our request for admission about some of the  
12 specific contentions. Let me find that real quick.  
13 I'm sorry.

14 A Bryan, may I go back and just add  
15 something to my last answer about trying to address  
16 your question about the presidential contest,  
17 presidential --

18 Q Uh-huh.

19 A Okay. What I'm trying to say is that  
20 while you're asking about the presidential contest,  
21 and we have seen a whole lot of errors in the entire  
22 November election from the top of the ballot to tax  
23 commissioner at the bottom, the system has so many  
24 flaws in its operation right now that it is  
25 reasonable to question any election contest on the

## 1 CERTIFICATE

2 STATE OF GEORGIA:

3 COUNTY OF FULTON:

4 I hereby certify that the foregoing  
5 transcript was taken down, as stated in the caption,  
6 and the colloquies, questions and answers were  
7 reduced to typewriting under my direction; that the  
8 transcript is a true and correct record of the  
9 evidence given upon said proceeding.

10 I further certify that I am not a relative  
11 or employee or attorney of any party, nor am I  
12 financially interested in the outcome of this  
13 action.

14 I have no relationship of interest in this  
15 matter which would disqualify me from maintaining my  
16 obligation of impartiality in compliance with the  
17 Code of Professional Ethics.

18 I have no direct contract with any party  
19 in this action and my compensation is based solely  
20 on the terms of my subcontractor agreement.

21 Nothing in the arrangements made for this  
22 proceeding impacts my absolute commitment to serve  
23 all parties as an impartial officer of the court.

24 This the 4th day of April, 2022.

25 

ROBYN BOSWORTH, RPR, CRR, CRC, CCR-B-2138